

**ELECTIONS: THE ELECTION - CONDUCT OF ELECTION; ELECTION RESULTS - GENERAL PROVISIONS - STATE BOARD OF ELECTIONS - CAMPAIGN FINANCE DISCLOSURE ACT.**

**Local electoral board may meet at any time following poll closing to ascertain and complete abstract of total votes cast at election. Circumstances may cause local board to meet promptly, within parameters of law, to expedite its responsibilities. Special election held on eve of General Assembly is such circumstance. When State Board of Elections has fulfilled election certification requirements in expedited manner, and uniformity, legality and purity of electoral process has been preserved, successful candidate in special election for House of Delegates may take oath of office day after election.**

The Honorable M. Kirk Cox

Member, House of Delegates

January 5, 1998

You ask whether there is any waiting period before a local electoral board may meet to ascertain the results of a special election for the House of Delegates for the purpose of preparing certified abstracts of vote totals for delivery to the State Board of Elections. You also ask whether Virginia law would preclude the winning candidate in a special election to the House of Delegates from taking the oath of office with other House members on the day after the election if the statutory certifications of the local and state boards of election have been completed before that time.

Section 24.2671 of the *Code of Virginia* provides that a local electoral board shall meet at the clerk's office, or in the office of the general registrar as provided in § 24.2668, "at or before 5:00 p.m. on the day after any election," to ascertain the totals and complete the abstract of votes cast at an election. The primary object of statutory construction and interpretation is to ascertain and give effect to the legislative intent.<sup>1</sup> "If the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it."<sup>2</sup>

Section 24.2671 clearly authorizes local boards to meet "at or before 5:00 p.m. on the day after any election." (Emphasis added.) I construe this language to establish a *deadline* by which the board must meet, i.e., before 5:00 p.m. on the day after the election. It is not intended to establish a waiting period, or otherwise require the local board to wait until the day after the election to meet. Accordingly, it is my opinion that the local board, if it is so inclined and has the necessary materials, may meet at any time following the closing of the polls in order to perform its statutory duties. Indeed, there may be circumstances in a given situation which would cause the board to meet promptly, within the parameters of the law, to expedite its responsibilities. A special election held on the eve of the General Assembly is, in my opinion, such a circumstance.

You next ask whether Virginia law would preclude the winning candidate in a special election to the House of Delegates from taking the oath of office with the

other members when the House convenes on the day after the election, provided all statutory certifications have been completed.

Section 24.2675 requires that "[a]s soon as the electoral board determines the persons who have received the highest number of votes," an abstract of the votes must be made out, certified and signed by the electoral board, and immediately "mailed or delivered by hand to the State Board." Section 24.2-679(B) requires the State Board to "meet as soon as possible after it receives the returns for any special election held at a time other than the November general election to ascertain the results of the special election," by examining the certified abstracts and making statements regarding the number of votes given for the office in question.<sup>3</sup> Finally, § 24.2680 states that, "[s]ubject to the requirements of § 24.2922,<sup>[4]</sup> the State Board shall without delay complete and transmit to each of the persons declared to be elected a certificate of his election." Upon the satisfaction of these statutory conditions, the successful candidate is eligible to take the oath of office. There is no further limitation or waiting period required by Virginia law. As a practical matter, I am aware that the fundamental objective of the State Board of Elections is "to obtain uniformity[,] ¼ legality and purity in all elections."<sup>5</sup> I am of the opinion that where circumstances permit the accommodation of all statutory certification requirements in an expedited manner, and the uniformity, legality and purity of the electoral process may be preserved, there is no specific statutory or legal impediment which would preclude a successful candidate in a special election for the House of Delegates from taking the oath of office on the day following the election.<sup>6</sup>

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<sup>1</sup>Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

<sup>2</sup>Temple v. City of Petersburg, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944); see also Op. Va. Att'y Gen.: 1995 at 61, 62; 1994 at 93, 95.

<sup>3</sup>See also § 24.2679(A).

<sup>4</sup>Section 24.2922 relates to the filing of prescribed reports of contributions and expenditures.

<sup>5</sup>Section 24.2103.

<sup>6</sup>In a republic, the bureaucracy must work-sometimes more expeditiously than at others-to implement the will of the people as expressed by their ballots. And, as here, when something as fundamental as the seating of a district's representative before a critical vote is at stake, and the bureaucracy may legally do so, it should work in an expeditious fashion.